

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, )  
)  
)  
) CASE NO. 16-CR-237  
)  
vs. )  
)  
ROBERT J. SEIFERT, )  
)  
Defendant. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HON. MAE A. D'AGOSTINO  
THURSDAY, SEPTEMBER 7, 2017  
ALBANY, NEW YORK

**FOR THE GOVERNMENT:**

OFFICE OF THE UNITED STATES ATTORNEY  
By: MICHAEL S. BARNETT, AUSA  
445 Broadway, Room 218  
Albany, New York 12207-2924

**FOR THE DEFENDANT:**

SMITH HERNANDEZ LLC  
By: JULIO HERNANDEZ, III, ESQ.  
21 Everett Road Extension  
Albany, New York 12205-3357

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1 (Open court, 12:47 p.m.)

2 THE CLERK: Today is Thursday, September 7, 2017. The  
3 time is 12:47 p.m. The case is United States of America versus  
4 Robert J. Seifert, case No. 16-CR-237. We're here for a final  
5 revocation hearing. May we have appearances for the record,  
6 please.

7 MR. BARNETT: Good afternoon, Your Honor. Michael  
8 Barnett for the United States and Ronald LaCoy is here from  
9 probation.

10 THE COURT: Good afternoon.

11 MR. HERNANDEZ: Julio Hernandez on behalf of  
12 Mr. Seifert, Your Honor.

13 THE COURT: Good afternoon to both of you. We're here  
14 today of course for a final revocation hearing regarding the  
15 alleged supervised release violation as set forth in the  
16 violation petition.

17 Britney, would you swear in the defendant, please?

18 THE CLERK: Mr. Seifert, would you please stand and  
19 raise your right hand? Would you please state your full name  
20 for the record, please?

21 THE DEFENDANT: Robert J. Seifert.

22 (Whereupon, defendant placed under oath.)

23 THE COURT: Be seated, sir.

24 Mr. Hernandez, have you discussed a disposition of the  
25 alleged violation with your client?

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1 MR. HERNANDEZ: I have, Your Honor.

2 THE COURT: And does he wish to admit to the  
3 violation?

4 MR. HERNANDEZ: He does, Your Honor.

5 THE COURT: Thank you. Britney, would you go ahead --  
6 before you do that, let me ask you. Mr. Seifert, have you had  
7 adequate time and opportunity to discuss the alleged violation  
8 petition and all aspects of your case with your attorney?

9 THE DEFENDANT: Yes, I have, ma'am.

10 THE COURT: Do you desire to, as your attorney said,  
11 admit to the violation here this afternoon?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: You've had a chance to read a copy of the  
14 violation petition?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Britney, would you go ahead and take the  
17 plea?

18 THE CLERK: Mr. Seifert, would you please stand? In  
19 the case of United States of America versus Robert J. Seifert,  
20 case No. 16-CR-237, the violation petition alleges in violation  
21 No. 1: Immediately following sentencing, you shall be  
22 transported directly from the James Foley US Courthouse in  
23 Albany, New York, to the McPike Addiction Treatment Center in  
24 Utica, New York, to participate in inpatient substance abuse  
25 and/or mental health treatment at that facility. You must abide

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1 by the rules of the McPike program, which may include a  
2 medication regimen. Defendant Seifert was transported to the  
3 inpatient program at McPike following sentencing on August 3,  
4 2017. However, Seifert left this program against medical advice  
5 on August 15, 2017, and his present whereabouts are unknown.

6 Mr. Seifert, do you acknowledge and admit to violation  
7 No. 1 of the petition?

8 THE DEFENDANT: Yes, I do.

9 THE CLERK: Thank you.

10 THE COURT: Be seated, sir.

11 At this time, I am prepared to impose sentence. Does  
12 the government wish to say anything before I impose sentence?

13 MR. BARNETT: No, Your Honor. We do seek a guideline  
14 sentence. I believe defense counsel is going to ask for a  
15 limited adjournment in the hopes of being able to secure an  
16 inpatient placement for his client. I think his thinking is if  
17 he can do that, maybe the resulting sentence could be more  
18 lenient. I have no opposition to a request for a limited  
19 adjournment to the extent Your Honor wants to grant that.

20 Other than that, Your Honor, we do seek a guideline  
21 sentence. I don't have to go into all the details about this  
22 defendant because it's all fresh in our minds because he was  
23 sentenced only a month ago. I am troubled by the very quick  
24 violation coming right after sentencing. I'm troubled by his  
25 criminal record and his apparent inability or refusal to address

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1 substance abuse, alcohol abuse, and mental health issues. So  
2 that is why, Your Honor, we do seek a guideline sentence of  
3 between 8 and 14 months in jail. That's all I have to say.  
4 Thank you.

5 THE COURT: Thank you.

6 Mr. Hernandez.

7 MR. HERNANDEZ: Yes, Your Honor. Just a quick little  
8 background for the Court with respect to this violation.  
9 Mr. Seifert was ordered by the Court to pay \$100 assessment fee.  
10 Once he was brought to McPike, he had a commissary check from  
11 Rensselaer County Jail coming to him. That check was released  
12 to me, and I had the check. My initial plan was to deposit that  
13 check into his checking account or his bank, which is in  
14 Canandaigua, but they had a local branch in Cobleskill.

15 Right before I did that, I spoke with Mr. Seifert from  
16 McPike. He asked if I could forward him the check and he would  
17 handle the check from there. I forwarded the check to  
18 Mr. Seifert. McPike took him to a bank to allow him to cash  
19 that check, which was close to \$3,000, Your Honor. The bank  
20 would not cash that check at that time. So he went to a check  
21 cashing place near that bank unbeknownst to the counselor from  
22 McPike.

23 When McPike became aware that he had gone there, they  
24 was upset. The counselor was upset. They had asked that he  
25 submit to a cavity, body cavity search. He was indignant about

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1 that, and a confrontation took place about that. He indicated  
2 that he wanted to pay his \$100 assessment. So Mr. Seifert acted  
3 in an irrational manner, but afraid that they were going to  
4 either go through his body, he fled. He took off, and he went  
5 to Canandaigua.

6 The next day or so, Mr. Seifert calls me up in a  
7 complete panic that he had left. I had told him that he needs  
8 to come back and report to his probation officer, Chris McNeill.  
9 I contacted the probation department on his behalf, left  
10 messages with Ed Cox and Chris McNeill -- Ed Cox was on  
11 vacation -- to try to coordinate a surrender on the part of  
12 Mr. Seifert.

13 We played phone tag back and forth a little bit, and  
14 the following Monday or Tuesday, Mr. McNeill contacted me.  
15 Without confirming that there was an arrest warrant, he said it  
16 would not necessarily be -- he can come back here, but that  
17 would not necessarily be the end of it. I understood what he  
18 kind of meant that there was an arrest warrant without him  
19 telling me that. I explained that to Mr. Seifert.

20 Mr. Seifert came to Albany on Thursday, August --  
21 August 24, and came to my office with the purposes of  
22 surrendering himself that day. I was on vacation and out of the  
23 office that day. A complete panic attack hit Mr. Seifert  
24 because I wasn't there. He was prepared to surrender himself to  
25 the Court for his actions, and he called 911 in a state of panic

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1 and shock and got himself admitted into Albany Med psych ward.

2 He subsequently contacted me. I contacted probation.  
3 Probation was made aware that he was in Albany Med, and once he  
4 was released from Albany Med psych center, he was taken into  
5 custody and brought before the Court and Judge Hummel, and here  
6 we stand here today.

7 I don't think that his violation was -- what I  
8 explained to him is that he had good intentions of paying the  
9 assessment fee. He went about it the wrong way and did not  
10 handle authority in a proper manner, and he just became  
11 completely scared. He did not try to abscond and leave the area  
12 or take off and not come back. He knew what he did was wrong  
13 and he had to pay the price, and he came back.

14 I don't think -- you know, from looking at the McPike  
15 treatment center, they had just started to treat his mental  
16 illness. They hadn't had the opportunity to get his mental  
17 records to place him in the proper medication that he would need  
18 or they would see fit that he needed while at McPike. So I  
19 believe that that was attached to -- their records show that  
20 that was the case, that they just didn't know enough of his  
21 background to prescribe the medication that he was seeking for  
22 and also treat his mental illness in addition to his alcohol  
23 addiction.

24 I don't think, Judge, that it's in the interest of  
25 society, the best interest of everyone here to just give up on

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1 Mr. Seifert at this time when in fact he is still seeking to  
2 help himself. He's not trying to run away. He's not giving up  
3 on himself.

4 I think that, one, whether McPike would take him back  
5 or whether there would be an alternative place to place him, we  
6 should at least try to see if that alternative does exist with  
7 the understanding to Mr. Seifert that if in fact he screws up or  
8 drops the ball or doesn't handle things in the proper manner,  
9 that at that time, the repercussions are going to be great. I  
10 think that --

11 THE COURT: I thought I made that very clear to him a  
12 little while ago that the repercussions were going to be great,  
13 but go ahead and finish.

14 MR. HERNANDEZ: I think that we can put other  
15 conditions. One of the things, because I spoke to somebody from  
16 the VA, Your Honor, is that we can have and I can have the VA  
17 place a payee on behalf of Mr. Seifert so that funds which could  
18 create a temptation to him can be limited to him to an on-need  
19 basis so that he is therefore forced to focus on his mental  
20 health issues and his alcohol addiction issues. I think that's  
21 what he wants to do, Your Honor.

22 He was doing okay while he was there. Again this was  
23 a confrontation that he just did not handle well and fright took  
24 over and there was flight, but he didn't -- once he left the  
25 area, he knew what he did was wrong. He kept in contact with



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1 me. I tried to get him back here in front of the Court as  
2 quickly as possible so that whatever issues existed, maybe we  
3 can remedy those issues, and I think that -- I think those  
4 issues are there, but I think that those are things that we  
5 could still fix and that he could still be a supervised and  
6 successfully complete probation, Your Honor.

7 THE COURT: All right. Thank you, Mr. Hernandez.

8 Mr. Seifert, do you want to say anything before I  
9 impose sentence? You may, but you're not required to.

10 THE DEFENDANT: Well, I'd like to say that I'm very  
11 ambitious about getting my life together. I really didn't want  
12 this to happen. I have a lot of mental illness problems I have  
13 to work out. They seem to take control of me sporadically on  
14 the spur of the moment. I just have to be I guess more aware of  
15 my surroundings and the consequences, Your Honor.

16 THE COURT: All right. Thank you. I have reviewed  
17 all of the materials that have been provided, and I'm very  
18 familiar with Mr. Seifert because I was the sentencing judge.  
19 And when I sentenced Mr. Seifert, I carefully warned you,  
20 Mr. Seifert, that if you did not abide by the conditions that I  
21 was imposing, that there were going to be severe consequences  
22 for you.

23 Probation and the Court and your attorney jumped  
24 through a lot of hoops to get you into the treatment center that  
25 you chose. The probation department, abandoning concerns for

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1 their own safety, drove you to the McPike treatment center, and  
2 I told you that you had to stay there and you had to  
3 successfully conclude the program.

4 I have no doubt that you suffer from mental illness,  
5 and I have no doubt that you suffer from alcohol abuse, but I  
6 also believe that you are a very manipulative person and you had  
7 your opportunity to engage in treatment and you didn't take it.  
8 You absconded. You compelled me to sign an arrest warrant, and  
9 you're not going to get another chance like that from me.

10 I think that it's a problem that you have \$3,000 a  
11 month coming in. I think it's a problem that you think that if  
12 the treatment program wants to do something that you don't like,  
13 that you can just take off. And I have a significant problem  
14 with that, and I see you as a danger to the community.

15 You have pled to a grade C violation, and your  
16 criminal history category is 6. Therefore, in accordance with  
17 the policy statement set forth in United States Sentencing  
18 Guidelines Chapter 7B1 and 4, I find your guideline imprisonment  
19 range is 8 to 14 months. The statutory maximum sentence is two  
20 years as the underlying conviction is a class D felony.

21 Upon your plea of guilty to the violation of the  
22 probation petition and pursuant to the Sentencing Reform Act, it  
23 is the judgment of the Court that you are hereby committed to  
24 the custody of the Bureau of Prisons for a term of 14 months. I  
25 recommend strongly that you participate in mental health

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1 evaluation and treatment while serving this imprisonment  
2 sentence with a view toward developing a viable release plan.

3           Upon release from imprisonment, you will be placed on  
4 a term of supervised release for 12 months. While on supervised  
5 release, you shall not commit another federal, state, or local  
6 crime. You shall comply with the standard conditions adopted by  
7 the Court and the following special conditions.

8           You shall refrain from the use of alcohol and be  
9 subject to alcohol testing and treatment while under  
10 supervision. You shall participate in a program for substance  
11 abuse, which shall include testing for use of controlled  
12 substances, controlled substance analogues, and alcohol. This  
13 may include outpatient treatment as recommended by the treatment  
14 provider based upon your risks and needs.

15           You may also be required to participate in inpatient  
16 treatment upon recommendation of the treatment provider and upon  
17 approval of the Court. The probation office shall approve the  
18 location, frequency, and duration of outpatient treatment. You  
19 must abide by the rules of any treatment program, which may  
20 include abstaining from the use of alcohol. You shall  
21 contribute to the cost of any evaluation and/or treatment in an  
22 amount to be determined by the probation officer based on your  
23 ability to pay and the availability of third-party payments.

24           You must participate in a mental health program, which  
25 may include medical, psychological, or psychiatric evaluation

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1 and outpatient treatment as recommended by the treatment  
2 provider based upon your risks and needs. You may also be  
3 required to participate in inpatient treatment upon  
4 recommendation of the treatment provider and upon approval of  
5 the Court. The probation office shall approve the location,  
6 frequency, and duration of outpatient treatment.

7 You must abide by the rules of the program, which may  
8 include a medication regimen. You shall contribute to the cost  
9 of any evaluation and/or treatment in an amount to be determined  
10 by the probation officer based on your ability to pay and the  
11 availability of third-party payments.

12 You are remanded to the custody of the United States  
13 Marshal in accordance with the terms of this sentence.

14 Both parties have the right to appeal this sentence in  
15 certain limited circumstances. You are advised to consult with  
16 your attorney to determine whether or not an appeal is  
17 warranted. Any appeal must be filed within 14 days of this  
18 sentence.

19 Is there anything further from the government?

20 MR. BARNETT: No, Your Honor, thank you.

21 THE COURT: Anything further from the defense?

22 MR. HERNANDEZ: No, Your Honor.

23 THE COURT: The defendant is remanded. Court stands  
24 adjourned.

25 (The matter adjourned at 1:05 p.m.)

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CERTIFICATION OF OFFICIAL REPORTER

I, JACQUELINE STROFFOLINO, RPR, Official Court Reporter,  
in and for the United States District Court for the Northern  
District of New York, do hereby certify that pursuant to Section  
753, Title 28, United States Code, that the foregoing is a true  
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proceedings held in the above-entitled matter and that the  
transcript page format is in conformance with the regulations of  
the Judicial Conference of the United States.

Dated this 30th day of November, 2017.

**/s/ JACQUELINE STROFFOLINO**

JACQUELINE STROFFOLINO, RPR

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**JACQUELINE STROFFOLINO, RPR  
UNITED STATES DISTRICT COURT - NDNY**